

FIRST REGULAR SESSION
[PERFECTED]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 197
94TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 197, adopted February 27, 2007.

Taken up for Perfection February 27, 2007. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0507S.04P

AN ACT

To repeal sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof twenty-two new sections relating to service contracts, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 2 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are 3 repealed and twenty-two new sections enacted in lieu thereof, to be known as 4 sections 385.200, 385.202, 385.204, 385.206, 385.208, 385.210, 385.212, 385.214, 5 385.216, 385.218, 385.220, 385.300, 385.302, 385.304, 385.306, 385.308, 385.310, 6 385.312, 385.314, 385.316, 385.318, and 385.320, to read as follows:

385.200. As used in sections 385.200 to 385.220, the following
2 **terms mean:**

3 (1) "Administrator", the person other than a provider who is
4 responsible for the administration of the service contracts or the
5 service contracts plan or for any filings required by sections 385.200 to
6 385.220;

7 (2) "Consumer", a natural person who buys other than for
8 purposes of resale any tangible personal property that is distributed in

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 commerce and that is normally used for personal, family, or household
10 purposes and not for business or research purposes;

11 (3) "Dealers", any motor vehicle dealer or boat dealer licensed or
12 required to be licensed under the provisions of sections 301.550 to
13 301.573, RSMo;

14 (4) "Director", the director of the department of insurance,
15 financial institutions and professional registration;

16 (5) "Maintenance agreement", a contract of limited duration that
17 provides for scheduled maintenance only;

18 (6) "Manufacturer", any of the following:

19 (a) A person who manufactures or produces the property and
20 sells the property under the person's own name or label;

21 (b) A subsidiary of the person who manufactures or produces
22 the property;

23 (c) A person who owns one hundred percent of the entity that
24 manufactures or produces the property;

25 (d) A person that does not manufacture or produce the property,
26 but the property is sold under its trade name label;

27 (e) A person who manufactures or produces the property and the
28 property is sold under the trade name or label of another person;

29 (f) A person who does not manufacture or produce the property
30 but, under a written contract, licenses the use of its trade name or label
31 to another person who sells the property under the licensor's trade
32 name or label;

33 (7) "Mechanical breakdown insurance", a policy, contract, or
34 agreement issued by an authorized insurer who provides for the repair,
35 replacement, or maintenance of a motor vehicle or indemnification for
36 repair, replacement, or service, for the operational or structural failure
37 of a motor vehicle due to a defect in materials or workmanship or to
38 normal wear and tear;

39 (8) "Motor vehicle extended service contract" or "service
40 contract", a contract or agreement for a separately stated consideration
41 or for a specific duration to perform the repair, replacement, or
42 maintenance of a motor vehicle or indemnification for repair,
43 replacement, or maintenance, for the operational or structural failure
44 due to a defect in materials, workmanship, or normal wear and tear,
45 with or without additional provision for incidental payment of

46 indemnity under limited circumstances, including but not limited to
47 towing, rental, and emergency road service, but does not include
48 mechanical breakdown insurance or maintenance agreements;

49 (9) "Nonoriginal manufacturer's parts", replacement parts not
50 made for or by the original manufacturer of the property, commonly
51 referred to as after market parts;

52 (10) "Person", an individual, partnership, corporation,
53 incorporated or unincorporated association, joint stock company,
54 reciprocal, syndicate, or any similar entity or combination of entities
55 acting in concert;

56 (11) "Premium", the consideration paid to an insurer for a
57 reimbursement insurance policy;

58 (12) "Provider", a person who is contractually obligated to the
59 service contract holder under the terms of a motor vehicle extended
60 service contract;

61 (13) "Provider fee", the consideration paid for a motor vehicle
62 extended service contract by a service contract holder;

63 (14) "Reimbursement insurance policy", a policy of insurance
64 issued to a provider and under which the insurer agrees, for the benefit
65 of the motor vehicle extended service contract holders, to discharge all
66 of the obligations and liabilities of the provider under the terms of the
67 motor vehicle extended service contracts in the event of
68 nonperformance by the provider. All obligations and liabilities include,
69 but are not limited to, failure of the provider to perform under the
70 motor vehicle extended service contract and the return of the unearned
71 provider fee in the event of the provider's unwillingness or inability to
72 reimburse the unearned provider fee in the event of termination of a
73 motor vehicle extended service contract;

74 (15) "Service contract holder" or "contract holder", a person who
75 is the purchaser or holder of a motor vehicle extended service contract;

76 (16) "Warranty", a warranty made solely by the manufacturer,
77 importer, or seller of property or services without charge, that is not
78 negotiated or separated from the sale of the product and is incidental
79 to the sale of the product, that guarantees indemnity for defective
80 parts, mechanical or electrical breakdown, labor, or other remedial
81 measures, such as repair or replacement of the property or repetition
82 of services.

385.202. 1. Motor vehicle extended service contracts shall not be
2 issued, sold, or offered for sale in this state unless the provider or its
3 designee has:

4 (1) Provided a receipt for the purchase of the motor vehicle
5 extended service contract to the contract holder at the date of
6 purchase;

7 (2) Provided a copy of the motor vehicle extended service
8 contract to the service contract holder within a reasonable period of
9 time from the date of purchase; and

10 (3) Complied with the provisions of sections 385.200 to 385.220.

11 2. All providers of motor vehicle extended service contracts sold
12 in this state shall file a registration with the director on a form, at a fee
13 and at a frequency prescribed by the director.

14 3. In order to assure the faithful performance of a provider's
15 obligations to its contract holders, each provider who is contractually
16 obligated to provide service under a motor vehicle extended service
17 contract shall:

18 (1) Insure all motor vehicle extended service contracts under a
19 reimbursement insurance policy issued by an insurer authorized to
20 transact insurance in this state; or

21 (2) (a) Maintain a funded reserve account for its obligation
22 under its contracts issued and outstanding in this state. The reserves
23 shall not be less than forty percent of gross consideration received, less
24 claims paid, on the sale of the motor vehicle extended service contract
25 for all in-force contracts. The reserve account shall be subject to
26 examination and review by the director; and

27 (b) Place in trust with the director a financial security deposit,
28 having a value of not less than five percent of the gross consideration
29 received, less claims paid, on the sale of the motor vehicle extended
30 service contract for all motor vehicle extended service contracts issued
31 and in force, but not less than twenty-five thousand dollars, consisting
32 of one of the following:

33 a. A surety bond issued by an authorized surety;

34 b. Securities of the type eligible for deposit by authorized
35 insurers in this state;

36 c. Cash;

37 d. A letter of credit issued by a qualified financial institution; or

38 e. Another form of security prescribed by regulations issued by
39 the director; or

40 (3) (a) Maintain a net worth of one hundred million dollars; and

41 (b) Upon request, provide the director with a copy of the
42 provider's or, if the provider's financial statements are consolidated
43 with those of its parent company, the provider's parent company's most
44 recent Form 10-K filed with the Securities and Exchange Commission
45 (SEC) within the last calendar year, or if the company does not file with
46 the SEC, a copy of the company's audited financial statements, which
47 shows a net worth of the provider or its parent company of at least one
48 hundred million dollars. If the provider's parent company's Form 10-K
49 or audited financial statements are filed to meet the provider's
50 financial stability requirement, then the parent company shall agree to
51 guarantee the obligations of the obligor relating to motor vehicle
52 extended service contracts sold by the provider in this state.

53 4. Provider fees collected on motor vehicle extended service
54 contracts shall not be subject to premium taxes. Premiums for
55 reimbursement insurance policies shall be subject to applicable
56 premium taxes.

57 5. Except for the registration requirement in subsection 2 of this
58 section, persons marketing, selling, or offering to sell motor vehicle
59 extended service contracts for providers that comply with sections
60 385.200 to 385.220 are exempt from this state's licensing requirements.

61 6. Providers complying with the provisions of sections 385.200 to
62 385.220 are not required to comply with other provisions of chapter 374
63 or 375, RSMo, or any other provisions governing insurance companies,
64 except as specifically provided.

385.204. Reimbursement insurance policies insuring motor
2 vehicle extended service contracts issued, sold, or offered for sale in
3 this state shall conspicuously state that, upon failure of the provider to
4 perform under the contract, such as failure to return the unearned
5 provider fee, the insurer that issued the policy shall pay on behalf of
6 the provider any sums the provider is legally obligated to pay or shall
7 provide the service for which the provider is legally obligated to
8 perform according to the provider's contractual obligations under the
9 motor vehicle extended service contracts issued or sold by the
10 provider.

385.206. 1. No person shall directly sell, offer for sale, or solicit
2 the sale of a motor vehicle extended service contract to a consumer,
3 other than the following:

4 (1) A dealer marketing or selling a motor vehicle extended
5 service contract insured under a reimbursement insurance policy;

6 (2) A manufacturer of motor vehicles, as defined in section
7 301.010, RSMo, marketing or selling a motor vehicle extended service
8 contract insured under a reimbursement insurance policy;

9 (3) A federally insured depository institution marketing or
10 selling a motor vehicle extended service contract insured under a
11 reimbursement insurance policy;

12 (4) A lender licensed and defined under sections 367.100 to
13 367.215, RSMo, marketing or selling a motor vehicle extended service
14 contract insured under a reimbursement insurance policy; or

15 (5) An administrator, provider, manufacturer, or person working
16 in concert with an administrator, provider, or manufacturer marketing
17 or selling a motor vehicle extended service contract demonstrating
18 financial responsibility as set forth in section 385.202.

19 2. No administrator or provider shall use a dealer as a fronting
20 company, and no dealer shall act as a fronting company. For purposes
21 of this subsection, "fronting company" means a dealer that authorizes
22 a third-party administrator or provider to use its name or business to
23 evade or circumvent the provisions of subsection 1 of this section.

24 3. Motor vehicle extended service contracts issued, sold, or
25 offered for sale in this state shall be written in clear, understandable
26 language, and the entire contract shall be printed or typed in easy-to-
27 read type and conspicuously disclose the requirements in this section,
28 as applicable.

29 4. Motor vehicle extended service contracts insured under a
30 reimbursement insurance policy under subsection 3 of section 385.202
31 shall contain a statement in substantially the following form:
32 "Obligations of the provider under this service contract are guaranteed
33 under a service contract reimbursement insurance policy. If the
34 provider fails to pay or provide service on a claim within sixty days
35 after proof of loss has been filed, the contract holder is entitled to make
36 a claim directly against the insurance company." A claim against the
37 provider also shall include a claim for return of the unearned provider

38 fee. The motor vehicle extended service contract also shall state
39 conspicuously the name and address of the insurer.

40 5. Motor vehicle extended service contracts not insured under a
41 reimbursement insurance policy pursuant to subsection 3 of section
42 385.202 shall contain a statement in substantially the following form:
43 "Obligations of the provider under this service contract are backed only
44 by the full faith and credit of the provider (issuer) and are not
45 guaranteed under a service contract reimbursement insurance policy."
46 A claim against the provider also shall include a claim for return of the
47 unearned provider fee. The motor vehicle extended service contract
48 also shall state conspicuously the name and address of the provider.

49 6. Motor vehicle extended service contracts shall identify any
50 administrator, the provider obligated to perform the service under the
51 contract, the motor vehicle extended service contract seller, and the
52 service contract holder to the extent that the name and address of the
53 service contract holder has been furnished by the service contract
54 holder.

55 7. Motor vehicle extended service contracts shall state
56 conspicuously the total purchase price and the terms under which the
57 motor vehicle extended service contract is sold. The purchase price is
58 not required to be preprinted on the motor vehicle extended service
59 contract and may be negotiated at the time of sale with the service
60 contract holder.

61 8. If prior approval of repair work is required, the motor vehicle
62 extended service contracts shall state conspicuously the procedure for
63 obtaining prior approval and for making a claim, including a toll-free
64 telephone number for claim service and a procedure for obtaining
65 emergency repairs performed outside of normal business hours.

66 9. Motor vehicle extended service contracts shall state
67 conspicuously the existence of any deductible amount.

68 10. Motor vehicle extended service contracts shall specify the
69 merchandise and services to be provided and any limitations,
70 exceptions, and exclusions.

71 11. Motor vehicle extended service contracts shall state the
72 conditions upon which the use of nonoriginal manufacturer's parts, or
73 substitute service, may be allowed. Conditions stated shall comply with
74 applicable state and federal laws.

75 12. Motor vehicle extended service contracts shall state any
76 terms, restrictions, or conditions governing the transferability of the
77 motor vehicle extended service contract.

78 13. Motor vehicle extended service contracts shall state the
79 terms, restrictions, or conditions governing termination of the service
80 contract by the service contract holder. The provider of the motor
81 vehicle extended service contract shall mail a written notice to the
82 contract holder within fifteen days of the date of termination.

83 14. Motor vehicle extended service contracts shall require every
84 provider to permit the service contract holder to return the contract
85 within at least twenty business days of mailing date of the motor
86 vehicle extended service contract or within at least ten days if the
87 service contract is delivered at the time of sale or within a longer time
88 period permitted under the contract. If no claim has been made under
89 the contract, the contract is void and the provider shall refund to the
90 contract holder the full purchase price of the contract. A ten percent
91 penalty per month shall be added to a refund that is not paid within
92 thirty days of return of the contract to the provider. The applicable
93 free-look time periods on service contracts shall apply only to the
94 original service contract purchaser.

95 15. Motor vehicle extended service contracts shall set forth all
96 of the obligations and duties of the service contract holder, such as the
97 duty to protect against any further damage and the requirement for
98 certain service and maintenance.

99 16. Motor vehicle extended service contracts shall state clearly
100 whether or not the service contract provides for or excludes
101 consequential damages or preexisting conditions.

 385.208. 1. A provider shall not use in its name the words
2 insurance, casualty, guaranty, surety, mutual, or any other words
3 descriptive of the insurance, casualty, guaranty, or surety business, nor
4 shall such provider use a name deceptively similar to the name or
5 description of any insurance or surety corporation, or any other
6 provider. This section shall not apply to a company that was using any
7 of the prohibited language in its name prior to August 28,
8 2007. However, a company using the prohibited language in its name
9 shall disclose conspicuously in its motor vehicle extended service
10 contract the following statement: "This agreement is not an insurance

11 **contract."**

12 **2. A provider or its representative shall not in its motor vehicle**
13 **extended service contracts or literature make, permit, or cause to be**
14 **made any false or misleading statement, or deliberately omit any**
15 **material statement that would be considered misleading if omitted, in**
16 **connection with the sale, offer to sell or advertisement of a motor**
17 **vehicle extended service contract.**

18 **3. A person, such as a bank, savings and loan association, lending**
19 **institution, manufacturer or seller of any product, shall not require the**
20 **purchase of a service contract as a condition of a loan or a condition**
21 **for the sale of any property.**

385.210. 1. An administrator, provider, or other intermediary
2 **shall keep accurate accounts, books, and records concerning**
3 **transactions regulated by sections 385.200 to 385.220.**

4 **2. An administrator's, provider's, or other intermediary's**
5 **accounts, books, and records shall include:**

6 **(1) Copies of each type of motor vehicle extended service**
7 **contract issued;**

8 **(2) The name and address of each service holder to the extent**
9 **that the name and address have been furnished by the service contract**
10 **holder;**

11 **(3) A list of the provider locations where motor vehicle extended**
12 **service contracts are marketed, sold, or offered for sale; and**

13 **(4) Claims files that shall contain at least the dates, amounts, and**
14 **description of all receipts, claims, and expenditures related to the**
15 **motor vehicle extended service contracts.**

16 **3. Except as provided in this section, an administrator shall**
17 **retain all records pertaining to each motor vehicle extended service**
18 **contract holder for at least three years after the specified period of**
19 **coverage has expired.**

20 **4. An administrator, provider, or other intermediary may keep**
21 **all records required under sections 385.200 to 385.220 on a computer**
22 **disk or other similar technology. If an administrator, provider, or**
23 **other intermediary maintains records in other than hard copy, records**
24 **shall be accessible from a computer terminal available to the director**
25 **and be capable of duplication to legible hard copy.**

26 **5. An administrator, provider, or other intermediary**

27 discontinuing business in this state shall maintain its records until it
28 furnishes the director satisfactory proof that it has discharged all
29 obligations to contract holders in this state.

30 6. An administrator, provider, or other intermediary shall make
31 all accounts, books, and records concerning transactions regulated
32 pursuant to sections 385.200 to 385.220 or other pertinent laws available
33 to the director upon request.

385.212. As applicable, an insurer that issued a reimbursement
2 insurance policy shall not terminate the policy until a notice of
3 termination, in a form and time frame prescribed by the director, has
4 been mailed or delivered to the director. The termination of a
5 reimbursement insurance policy shall not reduce the issuer's
6 responsibility for motor vehicle extended service contracts issued by
7 providers prior to the date of the termination.

385.214. 1. Providers are considered to be the agent of the
2 insurer that issued the reimbursement insurance policy. In cases
3 where a provider is acting as an administrator and enlists other
4 providers, the provider acting as the administrator shall notify the
5 insurer of the existence and identities of the other providers.

6 2. The provisions of sections 385.200 to 385.220 shall not prevent
7 or limit the right of an insurer that issued a reimbursement insurance
8 policy to seek indemnification or subrogation against a provider if the
9 insurer pays or is obligated to pay the service contract holder sums
10 that the provider was obligated to pay under the provisions of the
11 motor vehicle extended service contract or under a contractual
12 agreement.

385.216. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons
3 to enforce the provisions of sections 385.200 to 385.220 and protect
4 service contract holders in this state.

5 2. If the director determines that a person has engaged, is
6 engaging, or is about to engage in a violation of sections 385.200 to
7 385.220 or a rule adopted or order issued pursuant thereto, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, omission or course of business
10 constituting a violation of sections 385.200 to 385.220 or a rule adopted
11 or order issued pursuant thereto, the director may issue such

12 administrative orders as authorized under section 374.046, RSMo. A
13 violation of this section is a level two violation under section 374.049,
14 RSMo.

15 3. If the director believes that a person has engaged, is engaging,
16 or is about to engage in a violation of sections 385.200 to 385.220 or a
17 rule adopted or order issued pursuant thereto, or that a person has
18 materially aided, is materially aiding, or is about to materially aid an
19 act, practice, omission or course of business constituting a violation of
20 sections 385.200 to 385.220 or a rule adopted or order issued pursuant
21 thereto, the director may maintain a civil action for relief authorized
22 under section 374.048, RSMo. A violation of this section is a level two
23 violation under section 374.049, RSMo.

24 4. The enforcement authority of the director under this section
25 is cumulative to any other statutory authority of the director.

385.218. The director may promulgate rules to effectuate sections
2 385.200 to 385.220. Any rule or portion of a rule, as that term is defined
3 in section 536.010, RSMo, that is created under the authority delegated
4 in this section shall become effective only if it complies with and is
5 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
6 section 536.028, RSMo. This section and chapter 536, RSMo, are
7 nonseverable and if any of the powers vested with the general assembly
8 pursuant to chapter 536, RSMo, to review, to delay the effective date,
9 or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2007, shall be invalid and void.

385.220. 1. The provisions of sections 385.200 to 385.220 shall not
2 apply to:

- 3 (1) Warranties;
- 4 (2) Maintenance agreements;
- 5 (3) Commercial transactions; and
- 6 (4) Service contracts sold or offered for sale to persons other
7 than consumers.

8 2. Manufacturer's contracts on the manufacturer's products need
9 only comply with the provisions of sections 385.206, 385.208, and
10 385.216.

385.300. As used in sections 385.300 to 385.320, the following
2 terms mean:

3 (1) "Administrator", the person who is responsible for the
4 handling and adjudication of claims under the product service
5 agreements;

6 (2) "Consumer", a natural person who buys other than for
7 purposes of resale any tangible personal property that is distributed in
8 commerce and that is normally used for personal, family, or household
9 purposes and not for business or research purposes;

10 (3) "Contract holder", a person who is the purchaser or holder of
11 a service contract;

12 (4) "Director", the director of the department of insurance,
13 financial institutions, and professional registration;

14 (5) "Maintenance agreement", a contract of limited duration that
15 provides for scheduled maintenance only;

16 (6) "Manufacturer", any of the following:

17 (a) A person who manufactures or produces the property and
18 sells the property under the person's own name or label;

19 (b) A subsidiary of the person who manufactures or produces
20 the property;

21 (c) A person who owns one hundred percent of the entity that
22 manufactures or produces the property;

23 (d) A person that does not manufacture or produce the property,
24 but the property is sold under its trade name label;

25 (e) A person who manufactures or produces the property and the
26 property is sold under the trade name or label of another person;

27 (f) A person who does not manufacture or produce the property
28 but, under a written contract, licenses the use of its trade name or label
29 to another person who sells the property under the licensor's trade
30 name or label;

31 (7) "Nonoriginal manufacturer's parts", replacement parts not
32 made for or by the original manufacturer of the property, commonly
33 referred to as after market parts;

34 (8) "Person", an individual, partnership, corporation,
35 incorporated or unincorporated association, joint stock company,
36 reciprocal, syndicate, or any similar entity or combination of entities
37 acting in concert;

38 (9) "Premium", the consideration paid to an insurer for a
39 reimbursement insurance policy;

40 **(10) "Property", all forms of property;**

41 **(11) "Provider", a person who is contractually obligated to the**
42 **service contract holder under the terms of a service contract;**

43 **(12) "Provider fee", the consideration paid for a service contract,**
44 **if any, by a service contract holder;**

45 **(13) "Reimbursement insurance policy", a policy of insurance**
46 **issued to a provider and under which the insurer agrees, for the benefit**
47 **of the motor vehicle extended service contract holders, to discharge all**
48 **of the obligations and liabilities of the provider under the terms of the**
49 **service contracts in the event of nonperformance by the provider. All**
50 **obligations and liabilities include, but are not limited to, failure of the**
51 **provider to perform under the service contract and the return of the**
52 **unearned provider fee in the event of the provider's unwillingness or**
53 **inability to reimburse the unearned provider fee in the event of**
54 **termination of a service contract;**

55 **(14) "Service contract", a contract for a specific duration and**
56 **consideration to perform the repair, replacement, or maintenance of**
57 **property or indemnification for repair, replacement, or maintenance,**
58 **for the operational or structural failure of any residential or other**
59 **property due to a defect in materials, workmanship, or normal wear**
60 **and tear, with or without additional provision for incidental payment**
61 **of indemnity under limited circumstances, including, but not limited to,**
62 **unavailability of parts, obsolescence, food spoilage, rental, and**
63 **shipping. Service contracts may provide for the repair, replacement or**
64 **maintenance of property for damage resulting from power surges or**
65 **accidental damage. Service contract providers and administrators are**
66 **not deemed to be engaged in the business of insurance in this state;**

67 **(15) "Warranty", a warranty made solely by the manufacturer,**
68 **importer, or seller of property or services without charge, that is not**
69 **negotiated or separated from the sale of the product and is incidental**
70 **to the sale of the product, that guarantees indemnity for defective**
71 **parts, mechanical or electrical breakdown, labor, or other remedial**
72 **measures, such as repair or replacement of the property or repetition**
73 **of services.**

385.302. 1. It is unlawful for any person to issue, sell or offer for
2 **sale in this state any service contract, unless each provider has**
3 **registered with the director on a form prescribed by the director. Each**

4 provider shall pay to the director a fee established by the director by
5 rule, but not to exceed three hundred dollars annually.

6 2. A provider may, but is not required to, appoint an
7 administrator or other designee to be responsible for any or all of the
8 administration of service contracts and compliance with sections
9 385.300 to 385.320.

10 3. A provider or its designee shall provide a copy of the service
11 contract to the service contract holder within a reasonable period of
12 time following the date of purchase.

13 4. In order to assure the faithful performance of a provider's
14 obligations to its contract holders, each provider who contractually is
15 obligated to provide service under a service contract shall comply with
16 one of the following subdivisions:

17 (1) (a) Maintain a funded reserve account for its obligations
18 under its contract issues and outstanding in this state. The reserve
19 shall not be less than forty percent of gross consideration received, less
20 claims paid, on the sale of the service contract for all in-force
21 contracts. The reserve account shall be subject to examination and
22 review by the director; and

23 (b) Place in trust with the director a financial security deposit,
24 having a value of not less than five percent of the gross consideration
25 received, less claims paid, on the sale of the service contract for all
26 service contracts issued and in force, but not less than twenty-five
27 thousand dollars, consisting of one of the following:

28 a. A surety bond issued by an authorized surety;

29 b. Securities of the type eligible for deposit by authorized
30 insurers in this state;

31 c. Cash;

32 d. A letter of credit issued by a qualified financial institution; or

33 e. Another form of security prescribed by regulations issued by
34 the director; or

35 (2) (a) Maintain a net worth of one hundred million dollars; and

36 (b) Provide the director with a copy of the provider's or, if the
37 provider's financial statements are consolidated with those of its
38 parent company, the provider's parent company's most recent Form 10-
39 K filed or Form 20-F with the Securities and Exchange Commission
40 (SEC) within the last calendar year, or if the company does not file with

41 the SEC, a copy of the company's audited financial statements, which
42 shows a net worth of the provider or its parent company of at least one
43 hundred million dollars. If the provider's parent company's Form 10-K,
44 Form 20-F, or audited financial statements are filed to meet the
45 provider's financial stability requirement, then the parent company
46 shall agree to guarantee the obligations of the obligor relating to
47 service contracts sold by the provider in this state; or

48 (3) Insure all service contracts under a reimbursement insurance
49 policy issued by an insurer authorized to transact insurance in this
50 state. For the purposes of this subsection, the reimbursement
51 insurance policy shall contain the following provisions:

52 (a) In the event that the provider is unable to fulfill its
53 obligation under contracts issued in this state for any reason, including
54 insolvency, bankruptcy, or dissolution, the insurer will pay losses and
55 unearned fees under such plans directly to the contract holder making
56 a claim under the contract;

57 (b) The insurer issuing the contractual liability policy shall
58 assume full responsibility for the administration of claims in the event
59 of the inability of the provider to do so; and

60 (c) The policy may be canceled or not renewed by either the
61 insurer or the provider not less than sixty days after written notice
62 thereof has been given to the director and provider by the insurer;

63 (4) The reimbursement insurance referenced in subdivision (3)
64 above shall be obtained from an insurer that is authorized, registered
65 or otherwise permitted to transact insurance in this state or a surplus
66 lines insurer authorized pursuant to the laws of this state and which
67 insurer meets one of the following requirements:

68 (a) Maintain, at the time the policy is filed with the director and
69 continuously thereafter:

70 a. Surplus as to policyholders and paid-in capital of at least
71 fifteen million dollars; and

72 b. Annually file copies of the insurer's financial statements, its
73 National Association of Insurance Commissioners annual statement,
74 and the actuarial certification if required and filed in the insurer's
75 state of domicile; or

76 (b) Maintain, at the time the policy is filed with the director and
77 continuously thereafter:

78 a. Surplus as to policyholders and paid-in capital of less than
79 fifteen million dollars but at least equal to ten million dollars;

80 b. Demonstrate to the satisfaction of the director that the insurer
81 maintains a ratio of net written premiums, wherever written, to surplus
82 as to policyholders and paid-in capital of not greater than three to one;
83 and

84 c. Annually file copies of the insurer's financial statements, its
85 National Association of Insurance Commissioners annual statement,
86 and the actuarial certification if required and filed in the insurer's
87 state of domicile.

88 5. Provider fees collected on service agreements shall not be
89 subject to premium taxes. Premiums for reimbursement insurance
90 policies shall be subject to applicable taxes.

91 6. Except for compliance with the provider's registration
92 requirement in subsection 1 of this section, a person marketing, selling,
93 or offering to sell service contracts for a provider that is registered
94 under this section is exempt from licensing as a producer under the
95 insurance laws of this state.

 385.304. Reimbursement insurance policies insuring service
2 contracts issued, sold or offered for sale in this state shall state that,
3 upon failure of the provider to perform under the contract, including
4 the failure to return the unearned provider fee, the insurer that issued
5 the policy shall pay or perform according to the provider's contractual
6 obligations under the service contracts insured by the insurer.

 385.306. 1. Service contracts marketed, issued, sold, or offered
2 for sale in this state shall be written in clear, conspicuous, and
3 understandable language, and the entire contract shall be printed or
4 typed in easy-to-read type and conspicuously disclose the requirements
5 in this section, as applicable.

6 2. Service contracts insured under a reimbursement insurance
7 policy under subdivision (3) of subsection 4 of section 385.302 shall
8 contain a statement in substantially the following form: "Obligations
9 of the provider under this service contract are guaranteed under a
10 reimbursement insurance policy. If the provider fails to pay or provide
11 service on a claim within sixty days after proof of loss has been filed,
12 the contract holder is entitled to make a claim directly against the
13 insurance company." A claim against the provider may also include a

14 **claim for return of the unearned provider fee. The service contract**
15 **also shall state the name and address of the insurer.**

16 **3. Service contracts not insured under a reimbursement**
17 **insurance policy under subdivision (3) of subsection 4 of section 385.302**
18 **shall contain a statement in substantially the following form:**
19 **"Obligations of the provider under this service contract are backed only**
20 **by the full faith and credit of the provider (issuer) and are not**
21 **guaranteed under a reimbursement insurance policy." A claim against**
22 **the provider shall also include a claim for return of the unearned**
23 **provider fee. The service contract shall also state the name and**
24 **address of the provider.**

25 **4. Service contracts shall identify any administrator, the**
26 **provider obligated to perform under the contract, and the service**
27 **contract seller, if different than the provider or administrator. The**
28 **identities of such parties are not required to be preprinted on the**
29 **service contract and may be added to the service contract prior to**
30 **delivery to the contract holder.**

31 **5. Service contracts shall state the total purchase price and the**
32 **terms under which the service contract is sold. The purchase price is**
33 **not required to be preprinted on the service contract and may be**
34 **negotiated at the time of sale with the service contract holder.**

35 **6. If prior approval of repair work is required, the service**
36 **contracts shall state the procedure for obtaining prior approval and for**
37 **making a claim, including a toll-free telephone number for claim**
38 **service and a procedure for obtaining emergency repairs performed**
39 **outside of normal business hours.**

40 **7. Service contracts shall state the existence of any deductible**
41 **amount.**

42 **8. Service contracts shall specify the merchandise and services**
43 **to be provided and any limitations, exceptions, or exclusions.**

44 **9. Service contracts shall state the conditions upon which the**
45 **use of nonoriginal manufacturers' parts, refurbished merchandise, or**
46 **substitute service, may be allowed. Conditions stated shall comply with**
47 **applicable state and federal laws.**

48 **10. Service contracts shall state any terms, restrictions, or**
49 **conditions governing the transferability of the service contract.**

50 **11. Service contracts shall state any terms, restrictions, or**

51 conditions governing termination of the service agreement by the
52 service contract holder and provider.

53 12. Service contracts for which the service contract holder pays
54 a separate, identified consideration shall require every provider to
55 permit the service contract holder to return the contract within at least
56 twenty days of the date of mailing of the service contract or within at
57 least ten days if the service contract is delivered at the time of sale or
58 within a longer time period permitted under the contract. If no claim
59 has been made under the contract, the contract is void and the
60 provider shall refund to the contract holder the full purchase price of
61 the contract. A ten percent penalty per month shall be added to a
62 refund that is not paid within forty-five days of return of the contract
63 to the provider. The applicable free-look time periods on service
64 contracts shall apply only to the original service contract purchaser,
65 and only if no claim has been made prior to its return to the provider.

66 13. Service contracts shall set forth all of the obligations and
67 duties of the service contract holder, such as the duty to protect
68 against any further damage and the requirement for certain service
69 and maintenance.

70 14. Service contracts shall state clearly whether or not the
71 service contract provides for or excludes consequential damages,
72 preexisting conditions, or events covered under the original
73 manufacturer's warranty.

74 15. Service contracts shall state any limitations on the number
75 or value of repairs, replacements, or monetary settlements, as
76 applicable, that will be provided during the term of coverage.

385.308. 1. It is unlawful for any provider to use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other words
3 descriptive of the insurance, casualty, guaranty, or surety business, or
4 any name deceptively similar to the name or description of any
5 insurance or surety corporation, or other provider.

6 2. This section shall not apply to a company that was using any
7 of the prohibited language in its name prior to August 28,
8 2007. However, a company using the prohibited language in its name
9 shall disclose in its service contracts a statement in substantially the
10 following form: "This contract is not an insurance contract."

11 3. It is unlawful for a provider or its representative in its service

12 contracts or literature to make, permit, or cause to be made any false
13 or misleading statement, or deliberately omit any material statement
14 that would be considered misleading if omitted, in connection with the
15 sale, offer to sell or advertisement of a product service contract.

16 4. It is unlawful for a person, such as a bank, savings and loan
17 association, or lending institution, to require the purchase of a service
18 contract as a condition of a loan or other financing transaction.

19 5. It is unlawful for a person, such as a manufacturer or retailer,
20 to require the purchase of a service contract as a condition to the sale
21 of goods or services.

385.310. 1. A provider or administrator shall keep accurate
2 accounts, books, and records concerning transactions regulated under
3 sections 385.300 to 385.320. However, only one set of such accounts,
4 books, and records is required to be maintained and may be maintained
5 by third parties provided the provisions of this section are met.

6 2. An administrator's or provider's accounts, books, and records
7 shall include:

8 (1) Copies of each type of service contract issued;

9 (2) The name and address of each service contract holder to the
10 extent that the name and address have been furnished by the service
11 contract holder;

12 (3) A list of the provider locations where service contracts are
13 marketed, sold, or offered for sale; and

14 (4) Claims files that shall contain at least the dates, amounts, and
15 description of all receipts, claims, and expenditures related to the
16 service contracts.

17 3. Except as provided in subsection 5 of this section, an
18 administrator or provider shall retain or arrange for the retention of
19 all records pertaining to each service contract holder for at least three
20 years after the specified period of coverage had expired.

21 4. An administrator or provider may keep all records required
22 under sections 385.300 to 385.320 on a computer disk or other similar
23 technology. If an administrator or provider maintains records in other
24 than hard copy, records shall be accessible from a computer terminal
25 available to the director and be capable of duplication to legible hard
26 copy.

27 5. An administrator or provider discontinuing business in this

28 state shall maintain or arrange for the maintenance of its records until
29 it furnishes the director satisfactory proof that it has discharged all
30 obligations to contract holders in this state.

31 6. An administrator or provider shall make all accounts, books,
32 and records concerning transactions regulated under sections 385.300
33 to 385.320 or other pertinent laws available to the director upon
34 request.

 385.312. As applicable, an insurer that issued a reimbursement
2 insurance policy shall not terminate or nonrenew the policy until a
3 notice of termination has been mailed or delivered to the director. The
4 termination or nonrenewal of a reimbursement insurance policy shall
5 not reduce the issuer's responsibility for service contracts issued by
6 providers prior to the date of the termination.

 385.314. 1. Providers are considered to be the agent of the
2 insurer which issued the reimbursement insurance policy for purposes
3 of obligating the insurer to contract holders under service contracts
4 associated with the insurer's reimbursement policy, and the payment
5 of premium by the provider is not a condition to the insurer's
6 obligations for otherwise validly issued service contracts.

7 2. Sections 385.300 to 385.320 shall not prevent or limit the right
8 of an insurer which issued a reimbursement insurance policy to seek
9 indemnification or subrogation against a provider if the issuer pays or
10 is obligated to pay the service contract holder sums that the provider
11 was obligated to pay pursuant to the provisions of the product service
12 contract.

 385.316. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons
3 to enforce the provisions of sections 385.300 to 385.320 and protect
4 service contract holders in this state.

5 2. If the director determines that a person has engaged, is
6 engaging, or is about to engage in a violation of sections 385.300 to
7 385.320 or a rule adopted or order issued pursuant thereto, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, omission, or course of business
10 constituting a violation of sections 385.300 to 385.320 or a rule adopted
11 or order issued pursuant thereto, the director may issue such
12 administrative orders as authorized under section 374.046, RSMo. A

13 violation of this section is a level two violation under section 374.049,
14 RSMo.

15 3. If the director believes that a person has engaged, is engaging,
16 or is about to engage in a violation of sections 385.300 to 385.320 or a
17 rule adopted or order issued pursuant thereto, or that a person has
18 materially aided, is materially aiding, or is about to materially aid an
19 act, practice, omission, or course of business constituting a violation of
20 sections 385.300 to 385.320 or a rule adopted or order issued pursuant
21 thereto, the director may maintain a civil action for relief authorized
22 under section 374.048, RSMo.

23 4. The enforcement authority of the director under this section
24 is cumulative to any other statutory authority of the director.

385.318. The director may promulgate rules to effectuate sections
2 385.300 to 385.320. Any rule or portion of a rule, as that term is defined
3 in section 536.010, RSMo, that is created under the authority delegated
4 in this section shall become effective only if it complies with and is
5 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
6 section 536.028, RSMo. This section and chapter 536, RSMo, are
7 nonseverable and if any of the powers vested with the general assembly
8 pursuant to chapter 536, RSMo, to review, to delay the effective date,
9 or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2007, shall be invalid and void.

385.320. 1. Sections 385.300 to 385.320 shall not apply to:

- 2 (1) Warranties;
- 3 (2) Maintenance agreements;
- 4 (3) Warranties, service contracts, or maintenance agreements
5 offered by public utilities on their transmission devices to the extent
6 they are regulated under the laws of this state;
- 7 (4) Service contracts sold or offered for sale to persons other
8 than consumers;
- 9 (5) Service contracts sold or offered to nonresidents of this state
10 regardless of whether the entity selling or offering such contracts is
11 located or doing business in this state;
- 12 (6) Motor vehicle extended service contracts, as defined in
13 section 385.200; and
- 14 (7) Agreements or warranties which provide for the service,

15 **repair, replacement, or maintenance of the systems, appliances, and**
16 **structural components of residential or commercial real property.**

17 **2. Manufacturer's service contracts on the manufacturer's**
18 **products need only comply with the provisions of sections 385.306,**
19 **385.308, and 385.316.**

2 [407.1200. As used in sections 407.1200 to 407.1227, the
3 following terms shall mean:

4 (1) "Administrator", the person who is responsible for the
5 administration of the service contracts or the service contracts plan
6 and who is responsible for any filings required by sections 407.1200
7 to 407.1227;

8 (2) "Consumer", a natural person who buys other than for
9 purposes of resale any motor vehicle that is distributed in
10 commerce and that is normally used for personal, family, or
11 household purposes and not for business or research purposes;

12 (3) "Director", the director of the department of insurance;

13 (4) "Maintenance agreement", a contract of limited duration
14 that provides for scheduled maintenance only;

15 (5) "Manufacturer", a person that:

16 (a) Manufactures or produces the property and sells the
17 property under its own name or label;

18 (b) Is a wholly owned subsidiary of the person who
19 manufactures or produces the property;

20 (c) Is a corporation which owns one hundred percent of the
21 person who manufactures or produces the property;

22 (d) Does not manufacture or produce the property, but the
23 property is sold under its trade name label;

24 (e) Manufactures or produces the property and the property
25 is sold under the trade name or label of another person; or

26 (f) Does not manufacture or produce the property but,
27 pursuant to a written contract, licenses the use of its trade name
28 or label to another person that sells the property under the
29 licensor's trade name or label;

30 (6) "Mechanical breakdown insurance", a policy, contract,
31 or agreement issued by an authorized insurer that provides for the
repair, replacement, or maintenance of a motor vehicle or

32 indemnification for repair, replacement, or service, for the
33 operational or structural failure of a motor vehicle due to a defect
34 in materials or workmanship or to normal wear and tear;

35 (7) "Motor vehicle extended service contract" or "service
36 contract", a contract or agreement for a separately stated
37 consideration or for a specific duration to perform the repair,
38 replacement, or maintenance of a motor vehicle or indemnification
39 for repair, replacement, or maintenance, for the operational or
40 structural failure due to a defect in materials, workmanship, or
41 normal wear and tear, with or without additional provision for
42 incidental payment of indemnity under limited circumstances,
43 including, but not limited to, towing, rental, and emergency road
44 service, but does not include mechanical breakdown insurance or
45 maintenance agreements;

46 (8) "Nonoriginal manufacturer's parts", replacement parts
47 not made for or by the original manufacturer of the property,
48 commonly referred to as "after market parts";

49 (9) "Person", an individual, partnership, corporation,
50 incorporated or unincorporated association, joint stock company,
51 reciprocal, syndicate, or any similar entity or combination of
52 entities acting in concert;

53 (10) "Premium", the consideration paid to an insurer for a
54 reimbursement insurance policy;

55 (11) "Provider", a person who administers, issues, makes,
56 provides, sells, or offers to sell a motor vehicle extended service
57 contract, or who is contractually obligated to provide service under
58 a motor vehicle extended service contract such as sellers,
59 administrators, and other intermediaries;

60 (12) "Provider fee", the consideration paid for a service
61 contract in excess of the premium;

62 (13) "Reimbursement insurance policy", a policy of
63 insurance issued to a provider and pursuant to which the insurer
64 agrees, for the benefit of the service contract holders, to discharge
65 all of the obligations and liabilities of the provider under the terms
66 of the service contracts in the event of nonperformance by the
67 provider. All obligations and liabilities include, but are not limited

68 to, failure of the provider to perform under the service contract and
69 the return of the unearned provider fee in the event of the
70 provider's unwillingness or inability to reimburse the unearned
71 provider fee in the event of termination of a service contract;

72 (14) "Service contract holder" or "contract holder", a person
73 who is the purchaser or holder of a service contract;

74 (15) "Warranty", a warranty made solely by the
75 manufacturer, importer, or seller of property or services without
76 charge, that is not negotiated or separated from the sale of the
77 product and is incidental to the sale of the product, that guarantees
78 indemnity for defective parts, mechanical or electrical breakdown,
79 labor, or other remedial measures, such as repair or replacement
80 of the property or repetition of services.]

[407.1203. 1. Service contracts shall not be issued, sold, or
2 offered for sale in this state unless the administrator or its
3 designee has:

4 (1) Provided a receipt for the purchase of the service
5 contract to the contract holder at the date of purchase;

6 (2) Provided a copy of the service contract to the service
7 contract holder within a reasonable period of time from the date of
8 purchase; and

9 (3) Complied with the provisions of sections 407.1200 to
10 407.1227.

11 2. All administrators of service contracts sold in this state
12 shall file a registration with the director on a form, at a fee and at
13 a frequency prescribed by the director.

14 3. In order to assure the faithful performance of a
15 provider's obligations to its contract holders, each provider who is
16 contractually obligated to provide service under a service contract
17 shall:

18 (1) Insure all service contracts under a reimbursement
19 insurance policy issued by an insurer authorized to transact
20 insurance in this state; or

21 (2) (a) Maintain a funded reserve account for its obligation
22 under its contracts issued and outstanding in this state. The
23 reserves shall not be less than forty percent of gross consideration

24 received, less claims paid, on the sale of the service contract for all
25 in-force contracts. The reserve account shall be subject to
26 examination and review by the director; and

27 (b) Place in trust with the director a financial security
28 deposit, having a value of not less than five percent of the gross
29 consideration received, less claims paid, on the sale of the service
30 contract for all service contracts issued and in force, but not less
31 than twenty-five thousand dollars, consisting of one of the
32 following:

- 33 a. A surety bond issued by an authorized surety;
34 b. Securities of the type eligible for deposit by authorized
35 insurers in this state;
36 c. Cash;
37 d. A letter of credit issued by a qualified financial
38 institution; or
39 e. Another form of security prescribed by regulations issued
40 by the director; or

41 (3) (a) Maintain a net worth of one hundred million dollars;
42 and

43 (b) Upon request, provide the director with a copy of the
44 provider's or, if the provider's financial statements are consolidated
45 with those of its parent company, the provider's parent company's
46 most recent Form 10-K filed with the Securities and Exchange
47 Commission (SEC) within the last calendar year, or if the company
48 does not file with the SEC, a copy of the company's audited
49 financial statements, which shows a net worth of the provider or its
50 parent company of at least one hundred million dollars. If the
51 provider's parent company's Form 10-K or audited financial
52 statements are filed to meet the provider's financial stability
53 requirement, then the parent company shall agree to guarantee the
54 obligations of the obligor relating to service contracts sold by the
55 provider in this state.

56 4. Provider fees collected on service contracts shall not be
57 subject to premium taxes. Premiums for reimbursement insurance
58 policies shall be subject to applicable premium taxes.

59 5. Except for the registration requirement in subsection 2

60 of this section, persons marketing, selling, or offering to sell service
61 contracts for providers that comply with sections 407.1200 to
62 407.1227 are exempt from this state's licensing requirements.

63 6. Providers complying with the provisions of sections
64 407.1200 to 407.1227 are not required to comply with other
65 provisions of chapter 374 or 375, or any other provisions governing
66 insurance companies, except as specifically provided.]

[407.1206. Reimbursement insurance policies insuring
2 service contracts issued, sold, or offered for sale in this state shall
3 conspicuously state that, upon failure of the provider to perform
4 under the contract, such as failure to return the unearned provider
5 fee, the insurer that issued the policy shall pay on behalf of the
6 provider any sums the provider is legally obligated to pay or shall
7 provide the service which the provider is legally obligated to
8 perform according to the provider's contractual obligations under
9 the service contracts issued or sold by the provider.]

[407.1209. 1. Service contracts issued, sold, or offered for
2 sale in this state shall be written in clear, understandable
3 language and the entire contract shall be printed or typed in easy
4 to read ten-point type or larger and conspicuously disclose the
5 requirements in this section, as applicable.

6 2. Service contracts insured under a reimbursement
7 insurance policy pursuant to subsection 3 of section 407.1203 shall
8 contain a statement in substantially the following form:
9 "Obligations of the provider under this service contract are
10 guaranteed under a service contract reimbursement insurance
11 policy. If the provider fails to pay or provide service on a claim
12 within sixty days after proof of loss has been filed, the contract
13 holder is entitled to make a claim directly against the insurance
14 company.". A claim against the provider shall also include a claim
15 for return of the unearned provider fee. The service contract shall
16 also conspicuously state the name and address of the insurer.

17 3. Service contracts not insured under a reimbursement
18 insurance policy pursuant to subsection 3 of section 407.1203 shall
19 contain a statement in substantially the following form:
20 "Obligations of the provider under this service contract are backed

21 only by the full faith and credit of the provider (issuer) and are not
22 guaranteed under a service contract reimbursement insurance
23 policy.". A claim against the provider shall also include a claim for
24 return of the unearned provider fee. The service contract shall also
25 conspicuously state the name and address of the provider.

26 4. Service contracts shall identify any administrator, the
27 provider obligated to perform the service under the contract, the
28 service contract seller, and the service contract holder to the extent
29 that the name and address of the service contract holder has been
30 furnished by the service contract holder.

31 5. Service contracts shall conspicuously state the total
32 purchase price and the terms under which the service contract is
33 sold. The purchase price is not required to be preprinted on the
34 service contract and may be negotiated at the time of sale with the
35 service contract holder.

36 6. If prior approval of repair work is required, the service
37 contracts shall conspicuously state the procedure for obtaining
38 prior approval and for making a claim, including a toll-free
39 telephone number for claim service and a procedure for obtaining
40 emergency repairs performed outside of normal business hours.

41 7. Service contracts shall conspicuously state the existence
42 of any deductible amount.

43 8. Service contracts shall specify the merchandise and
44 services to be provided and any limitations, exceptions, and
45 exclusions.

46 9. Service contracts shall state the conditions upon which
47 the use of nonoriginal manufacturer's parts, or substitute service,
48 may be allowed. Conditions stated shall comply with applicable
49 state and federal laws.

50 10. Service contracts shall state any terms, restrictions, or
51 conditions governing the transferability of the service contract.

52 11. Service contracts shall state the terms, restrictions, or
53 conditions governing termination of the service contract by the
54 service contract holder. The provider of the service contract shall
55 mail a written notice to the contract holder within fifteen days of
56 the date of termination.

57 12. Service contracts shall require every provider to permit
58 the service contract holder to return the contract within at least
59 twenty business days of the date of mailing of the service contract
60 or within at least ten days if the service contract is delivered at the
61 time of sale or within a longer time period permitted under the
62 contract. If no claim has been made under the contract, the
63 contract is void and the provider shall refund to the contract holder
64 the full purchase price of the contract. A ten percent penalty per
65 month shall be added to a refund that is not paid within thirty
66 days of return of the contract to the provider. The applicable
67 free-look time periods on service contracts shall only apply to the
68 original service contract purchaser.

69 13. Service contracts shall set forth all of the obligations
70 and duties of the service contract holder, such as the duty to
71 protect against any further damage and the requirement for certain
72 service and maintenance.

73 14. Service contracts shall clearly state whether or not the
74 service contract provides for or excludes consequential damages or
75 preexisting conditions.]

 [407.1212. 1. A provider shall not use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other
3 words descriptive of the insurance, casualty, guaranty, or surety
4 business; or a name deceptively similar to the name or description
5 of any insurance or surety corporation, or any other provider. This
6 section shall not apply to a company that was using any of the
7 prohibited language in its name prior to August 28,
8 2004. However, a company using the prohibited language in its
9 name shall conspicuously disclose in its service contract the
10 following statement: "This agreement is not an insurance
11 contract."

12 2. A provider or its representative shall not in its service
13 contracts or literature make, permit, or cause to be made any false
14 or misleading statement, or deliberately omit any material
15 statement that would be considered misleading if omitted, in
16 connection with the sale, offer to sell or advertisement of a service
17 contract.

18 3. A person, such as a bank, savings and loan association,
19 lending institution, manufacturer or seller of any product, shall not
20 require the purchase of a service contract as a condition of a loan
21 or a condition for the sale of any property.]

 [407.1215. 1. An administrator, provider, or other
2 intermediary shall keep accurate accounts, books, and records
3 concerning transactions regulated by sections 407.1200 to 407.1227.

4 2. An administrator's, provider's, or other intermediary's
5 accounts, books, and records shall include:

6 (1) Copies of each type of service contract issued;

7 (2) The name and address of each service contract holder to
8 the extent that the name and address have been furnished by the
9 service contract holder;

10 (3) A list of the provider locations where service contracts
11 are marketed, sold, or offered for sale; and

12 (4) Claims files which shall contain at least the dates,
13 amounts, and description of all receipts, claims, and expenditures
14 related to the service contracts.

15 3. Except as provided in this section, an administrator shall
16 retain all records pertaining to each service contract holder for at
17 least three years after the specified period of coverage has expired.

18 4. An administrator, provider, or other intermediary may
19 keep all records required pursuant to sections 407.1200 to 407.1227
20 on a computer disk or other similar technology. If an
21 administrator, provider, or other intermediary maintains records
22 in other than hard copy, records shall be accessible from a
23 computer terminal available to the director and be capable of
24 duplication to legible hard copy.

25 5. An administrator, provider, or other intermediary
26 discontinuing business in this state shall maintain its records until
27 it furnishes the director satisfactory proof that it has discharged all
28 obligations to contract holders in this state.

29 6. An administrator, provider, or other intermediary shall
30 make all accounts, books, and records concerning transactions
31 regulated pursuant to sections 407.1200 to 407.1227 or other
32 pertinent laws available to the director upon request.]

2 [407.1218. As applicable, an insurer that issued a
3 reimbursement insurance policy shall not terminate the policy until
4 a notice of termination, in a form and time frame prescribed by the
5 director, has been mailed or delivered to the director. The
6 termination of a reimbursement insurance policy shall not reduce
7 the issuer's responsibility for service contracts issued by providers
prior to the date of the termination.]

2 [407.1221. 1. Providers are considered to be the agent of
3 the insurer that issued the reimbursement insurance policy. In
4 cases where a provider is acting as an administrator and enlists
5 other providers, the provider acting as the administrator shall
6 notify the insurer of the existence and identities of the other
7 providers.

2 2. The provisions of sections 407.1200 to 407.1227 shall not
3 prevent or limit the right of an insurer which issued a
4 reimbursement insurance policy to seek indemnification or
5 subrogation against a provider if the insurer pays or is obligated
6 to pay the service contract holder sums that the provider was
7 obligated to pay pursuant to the provisions of the service contract
8 or under a contractual agreement.]

2 [407.1224. 1. The director may conduct investigations or
3 examinations of providers, administrators, insurers, or other
4 persons to enforce the provisions of sections 407.1200 to 407.1227
5 and protect service contract holders in this state.

2 2. The director may take action that is necessary or
3 appropriate to enforce the provisions of sections 407.1200 to
4 407.1227 and the director's regulations and orders, and to protect
5 service contract holders in this state.

2 3. The director may order a service contract provider to
3 cease and desist from committing violations of sections 407.1200 to
4 407.1227 or the director's regulations or orders, may issue an order
5 prohibiting a service contract provider from selling or offering for
6 sale service contracts, or may issue an order imposing a civil
7 penalty, or any combination of these, if the provider has violated
8 the provisions of sections 407.1200 to 407.1227 or the director's
9 regulations or orders.

17 4. A person aggrieved by an order pursuant to this section
18 may request a hearing before the director. The hearing request
19 shall be filed with the director within twenty days of the date the
20 director's order is effective.

21 5. Pending the hearing and the decision by the director, the
22 director shall suspend the effective date of the order. At the
23 hearing, the burden shall be on the director to show why the order
24 issued pursuant to this section is justified. Such hearing shall be
25 held in accordance with the provisions of chapter 536, RSMo.

26 6. The director may bring an action in the circuit court of
27 Cole County for an injunction or other appropriate relief to enjoin
28 threatened or existing violations of sections 407.1200 to 407.1227
29 or of the director's orders or regulations. An action filed pursuant
30 to this section may also seek restitution on behalf of persons
31 aggrieved by a violation of sections 407.1200 to 407.1227 or orders
32 or regulations of the director.

33 7. A person in violation of sections 407.1200 to 407.1227 or
34 orders or regulations of the director may be assessed a civil penalty
35 not to exceed one thousand dollars per violation.

36 8. The authority of the director pursuant to this section is
37 in addition to other authority of the director.]

 [407.1225. The director may promulgate rules to effectuate
2 sections 407.1200 to 407.1227. Any rule or portion of a rule, as
3 that term is defined in section 536.010, RSMo, that is created
4 under the authority delegated in this section shall become effective
5 only if it complies with and is subject to all of the provisions of
6 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
7 section and chapter 536, RSMo, are nonseverable and if any of the
8 powers vested with the general assembly pursuant to chapter 536,
9 RSMo, to review, to delay the effective date, or to disapprove and
10 annul a rule are subsequently held unconstitutional, then the grant
11 of rulemaking authority and any rule proposed or adopted after
12 August 28, 2004, shall be invalid and void.]

 [407.1227. 1. The provisions of sections 407.1200 to
2 407.1224 shall not apply to:

3 (1) Warranties;

- 4 (2) Maintenance agreements;
5 (3) Commercial transactions; and
6 (4) Service contracts sold or offered for sale to persons other
7 than consumers.
- 8 2. Manufacturer's contracts on the manufacturer's products
9 need only comply with the provisions of sections 407.1209,
10 407.1212, and 407.1224.]

 Section B. The repeal of sections 407.1200, 407.1203, 407.1206, 407.1209,
2 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227 and
3 the enactment of sections 385.200, 385.201, 385.203, 385.204, 385.205, 385.207,
4 385.208, 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303,
5 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, and 385.312, shall become
6 effective January 1, 2008.

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